

WILLIE TYRONE TROTTIE	§	
VS.	§	CIVIL ACTION NO. 9:13-CV-192
ROSA M. MARTINEZ	§	

Plaintiff, Willie Tyrone Trottie, an inmate currently confined at the Polunsky Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983 against defendant Rosa M. Martinez.

The court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed without prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. No objections to the Report and Recommendation of United States Magistrate Judge have been filed to date. However, plaintiff filed correspondence with the court indicating he filed a motion to dismiss the above-referenced civil rights action. A review of the record in this case and in civil action no. 9:13cv97 reveals that plaintiff's motion to dismiss was filed in the wrong case. Plaintiff's motion to dismiss was filed in 9:13cv97, docket entry no. 8, but was entitled a motion for extension of time. Plaintiff has an absolute right to voluntarily dismiss his claims, without a court order, before the opposing party serves an answer. *See* FED. R. CIV. P. 41(a)(1). No answer has been filed by the defendant in this case. Plaintiff's claims, therefore, are dismissed pursuant to FED. R. CIV. P. 41(a)(1).

ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **PARTIALLY ADOPTED** to the extent it recommends dismissal. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

So **ORDERED** and **SIGNED** this **22** day of **November, 2013**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge